

PUBLIC PROCUREMENT

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TOPICS COVERED TODAY

- Types of Procurement
- Responsiveness and Responsibility
- Bid Protests

PURPOSE

- To protect public through fair and open competition
- Competition and transparency reduces appearance of and opportunity for favoritism
- All bidders on equal terms and process *inspires public confidence* that contracts are awarded equitably and economically

AUTHORITY



- Section 373.083(1), F. S. states:
“the Governing Board is authorized to Contract with public agencies, private corporations, or other persons. . . .”
- Chapter 287, F. S. governs contracting policies and procedures for state agencies
- District Procurement Policies

TYPES OF PROCUREMENTS

- COMPETITIVE PROCUREMENTS
 - Formal Competition
 - Informal Competition
- SPECIAL PROCUREMENTS
- NON-COMPETITIVE PROCUREMENTS

FORMAL COMPETITION

- The two primary methods of formal procurement are *Requests for Bids* (RFBs) and *Requests for Proposals* (RFPs)
- Formal competition is advertised to the public at large through local newspapers
- Vendors have Ch. 120, F. S. bid protest rights with formal competition

FORMAL COMPETITION

RFBs (bids) and RFPs (proposals)

- *Bids* used when District knows what it needs, and low price is primary factor of importance
- *Proposals* used when District generally knows what it wants, but asks vendors how they will best provide services
 - Proposals are evaluated and price is only one of several factors weighed

PROPOSALS

- Solicitation sets out the evaluation criteria and points that the evaluation team will use to score proposals
 - Proposed technical approach
 - Qualifications and experience of firm and subs
 - Availability of qualified staff
 - Cost effectiveness
 - SBE participation

FORMAL COMPETITION

Consultant's Competitive Negotiation Act (CCNA), Section 287.055, Fla. Stat.

- Applies to District
- Applies to solicitations for engineering, mapping, surveying and architectural services
- Proposals evaluated for most qualified without evaluating cost; Cost is not considered until negotiations with top firms

INFORMAL COMPETITION

- *Procurements* \leq \$50,000 no competition required, verbal quotes recommended
- *Non-Construction* $>$ \$50,000 and \leq \$150,000 minimum of three written quotes required
- *Construction* $>$ \$50,000 and \leq \$200,000 three written quotes are required

SPECIAL PROCUREMENTS



- Purchases of commodities or services from a contract awarded by another governmental entity if award was based on competitive process
- *Cooperative Agreements, Memorandum of Understanding* – agreements with or without funds between governmental entities to achieve a common purpose

NON-COMPETITIVE PROCUREMENTS

- *Sole Source* – commodities or services available only from one source (*proprietary software*)
- *Waiver of Competition* – commodities or services available from limited pool
- *Emergencies*: no competition ≤ \$500,000 but must report to GB within 30 days
- *Professional Services*: Such as legal and auditing services

RESPONSIVENESS AND RESPONSIBILITY

- All bids and proposals must be responsive and responsible to be considered for award
- A responsive bid or proposal is one that conforms in all material respects to the solicitation
- Responsive and Responsibility criteria = items required by solicitation, or lack of items gives Contractor a competitive advantage

RESPONSIVENESS

- *Minor deviations* are those that do not provide a vendor with a competitive advantage; Courts have afforded agencies wide discretion to waive minor deviations
- District has specifically reserved right to waive minor deviations in all solicitations
- Example: Contractor's License inadvertently omitted

RESPONSIVENESS



- *Material deviation* provides a competitive advantage – can never be waived

(Competitive Advantage: if a vendor is allowed to spend money or have extra time to obtain something)

- Example: Submitting bid one minute late; obtaining something required after bid or proposal deadline

RESPONSIBILITY

- *Responsible* means that a company has the capability in all respects to perform fully the contract requirements and has the integrity and reliability to assure good faith performance
- Result of allowing non-responsive or non-responsible Contractor to receive award: District would open itself up to bid protest for allowing competitive advantage

ANTI LOBBYING CLAUSE

- All respondents, their agents and proposed sub-consultants or subcontractors, are hereby placed on notice that neither the District's Governing Board, employees of the District or employees of any other project sponsoring agencies shall be lobbied either individually or collectively regarding this solicitation

ANTI LOBBYING

- Respondents, their agents and proposed sub-consultants or subcontractors are hereby placed on notice that they are prohibited from contacting any of these individuals for any purpose relating to the solicitation (e.g., general information, meetings of introduction, meals, etc.)

ANTI LOBBYING

- Any bid submitted by a respondent, its agent and potential sub-consultants or subcontractors who violate these guidelines will not be considered for review. The Contract Specialist or Purchasing Agent shall be the point of contact for questions/and or clarifications regarding the solicitation

BID PROTESTS

Section 120.57(3), F.S. entitles a person to a hearing if adversely affected by

- decision to award contract,
- specifications of solicitation,
- sole source award, or
- rejection of all awards

BID PROTESTS

- Results posted on Friday following Governing Board Meeting
 - Must file Notice of Intent to Protest within 72 hours of the time posted on District Website
- Often receive Notice of Intent to Protest to reserve right; many reasons for filing
- Four formal bid protests filed within past ten years; AEC, Champion, and Radgov all withdrew prior to hearing; only one went through formal hearing - Syslogic